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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE HEWLETT-PACKARD COMPANY
SHAREHOLDER DERIVATIVE LITIGATION

This Document Relates to: All Actions

Master File No. 12-CV-6003 CRB

**HEWLETT-PACKARD'S
MEMORANDUM IN RESPONSE TO
STEINBERG'S ADMINISTRATIVE
MOTION TO SEAL DOCUMENTS**

Dept.: Courtroom 6, 17th Floor
Judge: Hon. Charles R. Breyer

1 Pursuant to Civil Local Rule 7-11(b), Hewlett-Packard Company (“HP”) respectfully submits
2 this memorandum in response to Harriet Steinberg and Edward Vogel’s administrative motion to file
3 portions of their brief regarding the proposed settlement, and the corresponding unredacted pages of
4 the Demand Review Committee’s resolution, under seal. (Docket #216.)

5 HP provided Steinberg an unredacted copy of the DRC resolution under a confidentiality
6 agreement in response to the demand that she made to the company under 8 DEL. C. § 220. That
7 statute gives shareholders of Delaware corporations (like HP) the right to access corporate books and
8 records, including, if circumstances warrant it, privileged information. *Wal-Mart Stores, Inc. v. Ind.*
9 *Elec. Workers Pension Trust Fund IBEW*, 95 A.3d 1264, 1278 (Del. 2014); *Grimes v. DSC*
10 *Commc’ns Corp.*, 724 A.2d 561, 568 (Del. Ch. 1998). The DRC resolution includes privileged in-
11 formation that reflects HP’s future litigation strategy and its counsel’s assessment of its potential
12 damage claims against Michael Lynch and Sushovan Hussain and therefore are protected by the at-
13 torney work product and attorney-client privileges.

14 The production to Steinberg did not operate as a waiver of the attorney-client or attorney
15 work product privileges. *See Wal-Mart Stores*, 95 A.3d at 1276, 1278 (expressly recognizing that
16 shareholders fall within “a fiduciary exception to the attorney-client privilege”); *Grimes*, 724 A.2d at
17 568 (noting that ““an oft-invoked exception [to a corporation’s attorney-client privilege] applies in
18 suits by minority shareholders””); *Garner v. Wolfenbarger*, 430 F.2d 1093, 1102-03 (5th Cir. 1970)
19 (analogizing the fiduciary exception applicable to shareholders to situations where “the same attor-
20 ney acts for two or more parties having a common interest”); *Saito v. McKesson HBOC, Inc.*, No.
21 18553, 2002 WL 31657622, at *4 (Del. Ch. Nov. 13, 2002) (attorney work product privilege is not
22 waived “when the disclosing party and its recipient share some common interest”).

23 As a result, the redacted portions of Steinberg’s brief, and the corresponding pages of the un-
24 redacted DRC resolution, should remain under seal. Some of the information that Steinberg cites
25 from privileged portions of Section XIV of the DRC resolution can be found in Section XVII.C.2(h),
26 which is not privileged and therefore is not redacted. *See Steinberg Br. i*, 3-4, 15 (Docket #217).
27 Steinberg already cites to Section XVII.C.2 in another portion of her brief. HP would have no objec-
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tion if Steinberg chooses to amend her brief to delete the privileged information drawn from Section XIV and rely instead entirely on Section XVII.C.2.

Dated: September 22, 2014

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